

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

KENNETH KNIGHT Sr.;

Mills County, Iowa

CONSENT AMENDMENT TO
ADMINISTRATIVE ORDER

NO. 2010-AQ-38-A1

NO. 2010-SW-33-A1

TO: Kenneth Knight Sr.
53439 Deacon Road
Glenwood, IA 51534

I. SUMMARY

This Consent Amendment to administrative order (Amended Order) is agreed to by the Iowa Department of Natural Resources (DNR) and Kenneth Knight Sr. for the purpose of resolving violations related to illegal solid waste disposal, including the illegal open burning of solid waste.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfito, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic IA 50022
Phone: 712-243-1934

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Amended Order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Kenneth Knight Sr. owns a property located in Section 22, Township 73 North, Range 43 West, Mills County, Iowa.

2. On January 20, 2009, the DNR received a complaint from Mills County Sanitarian Mike Sukup indicating that illegal solid waste disposal had been observed on a property owned by Kenneth Knight Sr. The DNR, along with Mr. Sukup, visited the site on January 22, 2009 and observed a large amount of solid waste disposed of on the property, evidence of a spill of oil or some other petroleum product, and evidence of prior open burning of solid waste. Discarded appliances were observed at the site. Photographs were taken.

3. On January 28, 2009, the DNR issued a Notice of Violation to Kenneth Knight due to the documented illegal open dumping and open burning. Mr. Knight was directed to clean up the property and provide disposal receipts by March 15, 2009.

4. On March 25, 2010, the DNR investigated a complaint alleging the illegal open burning of solid waste at Mr. Knight's property. On that date it was observed that the solid waste previously documented at the site had not been cleaned up and that additional illegal disposal, including illegal open burning, had occurred since the January 2009 inspection. Photographs were taken.

5. On April 21, 2010, the DNR issued a Notice of Violation to Kenneth Knight Sr. due to the documented violations at his property.

6. On September 9, 2010, the DNR issued Administrative Order Nos. 2010-AQ-33 & 2010-SW-33, requiring the removal of all solid waste by October 15, 2010 and the payment of a penalty in the amount of \$3,500.

7. On October 21, 2010, the DNR visited the property of Kenneth Knight Sr. and confirmed that all solid waste had been removed from the disposal site as required by the administrative order.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567

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IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented violations of these provisions by Kenneth Knight.

V. ORDER

In light of the compliance with the deadline for removal of solid waste contained in the original administrative order, the assertions by Kenneth Knight Sr. and other witnesses that the previous assessment of a fine in the amount of \$3,500 will create undue financial hardship for Mr. Knight, and in order to resolve this matter the parties hereby agree to the following:

1. By May 15, 2011, Kenneth Knight Sr. shall pay a penalty in the amount of \$500.
2. By October 15, 2010, Kenneth Knight Sr. shall remove and properly dispose of all solid waste on his property located in Section 22, Township 73 North, Range 43 West, Mills County, Iowa. *This provision has been previously satisfied.*

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Amended Order with an administrative penalty of \$500. The administrative penalty is determined as follows:

Economic Benefit – Kenneth Knight has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. This economic benefit has been

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greatly reduced by the subsequent clean up of the property. Based upon these considerations and in order to resolve this matter, a penalty of \$300 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal open burning of solid waste releases toxins that endanger human health and the environment. The continued failure to properly dispose of solid waste threatens the integrity of the regulatory program. The property has now been cleaned up. Based upon these considerations and in order to resolve this matter, a penalty of \$200 is assessed for this factor.


Culpability – Kenneth Knight has been given prior notice and the opportunity to clean up his property and stop illegal disposal. Despite such notice, Mr. Knight continued to dump and burn at the site. Based upon the circumstances of the case and the subsequent clean up of the solid waste, the DNR declines to assess a penalty for culpability in this case.

VII. APPEAL

This Amended Order is entered into knowingly by Kenneth Knight Sr. and all appeal rights are hereby waived.

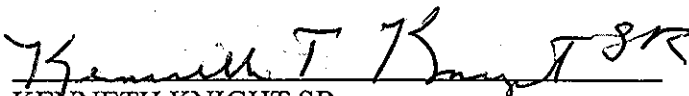
VIII. NONCOMPLIANCE

Failure to comply with this Amended Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
April, 2011



KENNETH KNIGHT SR.
NO 6350 \$1500.00
2/4

Dated this 4/19/11 day of
April, 2011

Field Office #4; VIC; VII.C.1